

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED
2017 MAY 26 AM 11:17
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MICHAEL DAVID GOODWIN

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v.

2:14-CV-0091

UNITED STATES OF AMERICA

**ORDER OVERRULING OBJECTIONS,
ADOPTING REPORT AND RECOMMENDATION, and
DENYING MOTION TO VACATE, SET ASIDE OR CORRECT SENTENCE**

Came for consideration the motion to vacate, set aside or correct sentence by a person in federal custody filed by petitioner. On March 31, 2017, the United States Magistrate Judge issued a Report and Recommendation in this cause, recommending therein that the instant motion be denied. On April 14, 2017, petitioner filed objections to the Report and Recommendation. On April 17, 2017, the Magistrate Judge issued an Order requiring the respondent to file a response to the objections, and the response was received on April 27, 2017.

In considering the objections and the response filed by the government, the Court finds that the first thirty-six (36) pages of the petitioner's forty-two (42) page objections to the Magistrate Judge's findings in the Report and Recommendation concern the presence of counsel at the December 13, 2012 arraignment. Petitioner argues the Magistrate Judge failed to account for the conflict of interest that existed between his attorney, Mr. Kelly, and the petitioner following the plea offer made by the government prior to the arraignment. However, as the government points out, the Magistrate Judge extensively discussed the testimony of all witnesses and the evidence concerning Mr. Kelly's representation at the arraignment and Mr. Kelly's ability to protect the constitutional interests of GOODWIN during his guilty plea hearing. Petitioner also objects to the

Report and Recommendation's finding that GOODWIN was not wholly without counsel at the arraignment because Mr. Kelly's name is absent from the transcript proceedings of the arraignment. This argument is disingenuous as all testimony and evidence presented during the hearing on the Motion to Vacate confirm that Mr. Kelly was present for the arraignment and Mr. Holesinger was not present. Further, the arraignment transcript indicates GOODWIN was asked if he was satisfied with Mr. Kelly's representation, and GOODWIN responded he was satisfied.

Having made an independent examination of the record in this case and having examined the Report and Recommendation of the Magistrate Judge, the undersigned United States District Judge hereby OVERRULES petitioner's objections, and ADOPTS the Report and Recommendation. Accordingly, the Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence filed by petitioner is, in all things, DENIED.

IT IS SO ORDERED.

ENTERED this 26th day of May 2017.

s/ Mary Lou Robinson
MARY LOU ROBINSON
UNITED STATES DISTRICT JUDGE